

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

GILA RIVER)	
TELECOMMUNICATIONS, INC.'S)	
PETITION FOR WAIVER OF)	WC Docket No. 10-90
THE HIGH COST LOOP)	
SUPPORT NATIONAL AVERAGE)	
COST PER LOOP)	

Comments of

National Congress of American Indians

On behalf of the National Congress of American Indians (NCAI), the oldest, largest, and most representative organization of American Indian and Alaska Native tribal governments, we write to express our support for Gila River Telecommunications, Inc. (GRTI) Petition for Waiver of the Commission's National Average Cost Per Loop Freeze Decision.¹ NCAI supports GRTI's request for relief in this public comment as it has negatively affected GRTI's ability to further deploy broadband to its Tribal residents, other Tribal Telecommunications Companies and providers who service Tribal Lands.

NCAI and the Federal Communications Commission share the same goal of finding solutions to deploy broadband on Tribal Lands. However, the Commission's decision to freeze the national

¹ Gila River Telecommunications, Inc., Petition for Expedited Waiver of the Commission's National Average Cost Per Loop Freeze Decision, WC Docket No. 10-90 (Nov. 9, 2015) (available at <https://ecfsapi.fcc.gov/file/60001333561.pdf>) (*GRTI 2015 Petition*); Revised Information for Gila River Telecommunications, Inc., Petition for Expedited Waiver of the Commission's National Average Cost Per Loop Freeze Decision, WC Docket No. 10-90 (July 22, 2016) (available at <https://ecfsapi.fcc.gov/file/10722670429307/Combined%20GRTI%20NACPL%20Waiver%20Request%202016.pdf>); Revised Information for Gila River Telecommunications, Inc., Petition for Expedited Waiver of the Commission's National Average Cost Per Loop Freeze Decision, WC Docket No. 10-90 (May 19, 2017) (available at <https://ecfsapi.fcc.gov/file/105200326413636/2017%20NACPL%20Waiver%20Update.pdf>) (*GRTI 2017 Petition*).

average cost per loop (NACPL) made this shared goal substantially more difficult. During the Commission's consideration of this policy change in 2014, NCAI urged the Commission to not take this step before engaging in Tribal consultation to better understand the potential for this change to substantially reduce this critical support for approximately half of all recipients, many serving Tribal lands.² Ultimately the Commission declined NCAI's request and moved forward with this change without engaging in the requested consultation. NCAI subsequently filed a Petition for Reconsideration of the decision as a result of the Commission's failure to consult with Tribal leaders as it has committed to doing in its 2000 *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*. That petition remains pending.³

Tribal Lands are in the most need of USF funding, and cutting funds across the board makes it more difficult to provide service in these high cost areas. As the Commission has noted, Tribal areas are the least-served in our Nation.⁴ The impacts of the FCC decision on GRTI's bottom line are staggering. As GRTI notes in its petition, it expects a total loss of \$896,000 for 2017 with further reductions to come.⁵ Other providers seeking to serve residents in Indian Country are expecting similar excruciating cuts, leaving Indian Country farther behind in the Digital Divide.

NCAI is further concerned by the short time frame given to providers to address these cuts. This change, adopted in December of 2014, took effect one year later, leaving GRTI and other carriers facing these cuts with virtually no time to make adjustments for expenses. Coupled with the fact that the support provided is for expenses already incurred, this lack of an adequate transition is particularly onerous. Some sort of transition should have been afforded GRTI and similarly-situated carriers, which is consistent with Commission policy when making such changes. NCAI, therefore, supports GRTI's request for a five-year transition so it can make adjustments in its finances regarding this ruling.

Moreover, NCAI requests that the Commission make its decision retroactive to GRTI's original waiver request. GRTI filed its original waiver petition in 2015, after receiving notice from the National Exchange Carriers Association (NECA) of the magnitude of the cuts it was to incur. That waiver petition put the Commission on notice that GRTI needed relief from the NACPL freeze.⁶ As part of the more specific waiver process adopted by the Commission in the *2011 USF/ICC Transformation Order* and subsequently modified in the *Fifth Order on Reconsideration*, the Commission committed to reviewing waiver requests for carriers serving

² *Calling on the Federal Communications Commission to Engage in Tribal Consultation Regarding Proposed Reforms to the High Cost Loop Support Mechanism in the Universal Service Fund*, National Congress of American Indians, Resolution # ATL-14-076, <http://www.ncai.org/resources/resolutions/calling-on-the-federal-communications-commission-to-engage-in-tribal-consultation-regarding-proposed-reforms-to-the-high-cost-loop-support-mechanism-in-the-universal-service-fund>.

³ See National Congress of American Indians, Petition for Reconsideration, WC 10-90, WC 14-58, and WC 14-192, available at <http://apps.fcc.gov/ecfs/comment/view?id=60001024554> (Feb. 27, 2015).

⁴ *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 15-191, 2016 Broadband Progress Report, 31 FCC Rcd 699 (2016).

⁵ *GRTI 2017 Petition* at 2.

⁶ *GRTI 2015 Petition*.

Tribal lands through an expedited process.⁷ In the *2011 USF/ICC Transformation Order*, the Commission stated that it would put out for public comment any waiver filed by a carrier serving Tribal lands within 45 days of receipt of a petition for waiver and that it would make a determination on the petition within 45 days after the closing of the record.⁸ While the Commission did not meet the timeframe for seeking public comment on GRTI's petition, NCAI urges the Commission to meet the timeframe it set out for reaching a decision on this petition.

NCAI also asks that the Commission, in addition to granting GRTI's waiver request, dutifully consider the impacts on their decisions on Indian Country. As GRTI notes in its petition, as a result of this and other cuts the Commission has initiated in the universal service high-cost program, it faces a reduction in support of \$3.1 million.⁹ Cuts of this level negatively impact deployment of broadband to Tribal Lands and put Indian Country farther and farther behind the rest of the Nation. Over time, these impacts add up to huge discrepancies that split the digital divide further. Doing right by Indian Country today, will ensure a future that we can eventually close the digital divide that persist in Indian Country.

NCAI is concerned about the impacts of this decision on all tribally owned Telecommunications Companies. GRTI may be the first to petition the FCC on this item, but we are very concerned about this item in a more national sense. The FCC can avoid many issues and better achieve its goals of deploying high speed internet in Indian Country by engaging with Tribes early in the process. NCAI reiterates its call for the Commission to commit to engaging in rigorous Tribal consultation early in its decision-making process to ensure its policies take into account the unique challenges in providing communications services to Tribal communities.

NCAI appreciates the opportunity to provide these comments supporting GRTI's pending waiver petition and urges that the Commission grant the request by GRTI.

⁷ *Connect America Fund, et al.*, WC Docket No. 10-90, et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17839-17841, paras. 539-544 (2011) (*USF/ICC Transformation Order*); *Connect America Fund, et al.*, WC Docket Nos. 10-90, et al., Fifth Order on Reconsideration, 27 FCC Rcd. 14549, 14557-14558, paras. 22-23 (2012) (Fifth Order on Reconsideration).

⁸ *USF/ICC Transformation Order*, 26 FCC Rcd at 17842, para. 544.

⁹ *GRTI 2017 Petition* at 2.